



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

April 25, 2023

Re: FOIA Request NLRB-2023-000245

Dear James Sherk (America First Policy Institute):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on November 1, 2022, where you seek:

“For the period between July 28, 2021 and the date of the completion of this request, ... all policy-adjacent e-mail communications from Member Wilcox’s official or personal e-mail accounts that were sent to, or received from, an e-mail domain of interest.” Your request specified that:

“a policy-adjacent e-mail communication is one that does not pertain solely to personal matters (e.g. birthday greetings, condolences on a death in the family, etc.) ...” and specified search terms to be used in processing the request, “...an email domain of interest is any of the following e-mail domains: @aflcio.org; @uaw.org; @seiu.org; @teamster.org; @afge.org; @ifpte.org; @nteu.org; @nea.org @aft.org; @afscme.org; @alpa.org; @atu.org; @apwu.org; @bctgm.org; @brs.org; @cwa-union.org; @afacwa.org; @iue-cwa.org; @iatse.net; @ironworkers.org; @iaff.org; @insulators.org; @iamaw.org; @goiam.org; @nffe.org; @tcunion.org; @smart-union.org; @boilermakers.org; @ibew.org; @bridgedeck.org; @bacweb.org; @iuec.org; @iuoe.org; @iupat.org; @iupa.org; @liuna.org; @npmhu.org; @natca.org; @nalc.org; @nationalnursesunited.org; @nage.org; @nytwa.org; @nflpa.org; @opeiu.org; @opcmia.org; @sagafta.org; @seafarers.org; @twu.org; @unitehere.org; @ua.org; @ufcw.org; @rwdsu.org; @umwa.org; @usw.org; @unionroofers.com; @uwua.net; @wgaeast.org; @nabtu.org; @smart-union.org; @ilwu.org; @carpenters.org; @nursingworld.org; @epi.org; @nelp.org; @amprogress.org; @bluegreenalliance.org.”

You assumed financial responsibility for the processing of your request in the amount of \$37.00.

We acknowledged your request on November 1, 2022. We also granted your request for a fee waiver.

I am denying your request to search Member Wilcox's personal email account. Absent evidence to the contrary, government employees are presumed to have complied with the 20-day requirement to forward official communications from a personal email account to the appropriate agency account. *Judicial Watch*, 319 F. Supp. 3d at 438; See *Wright v. Admin. for Children & Families*, No. 15-cv-218, 2016 U.S. Dist. LEXIS 140314 at 28 (D.D.C. 2016) ("purely speculative contentions cannot render [an] agency's search inadequate"); See also *Nat'l Archives & Records Admin. V. Favish*, 541 U.S. 157, 174 (2004). However, searches of the Agency email account were conducted as explained below.

Pursuant to the FOIA, a reasonable search of the Agency email account of Member Gwynne Wilcox was conducted, using Microsoft Purview, to find any emails between Member Wilcox and the email domains you specified for the time period from July 28, 2021 to November 1, 2022 (the date of the search). This search yielded 290 pages of responsive, releasable records, which are attached.

After a review, I have determined that certain information in the attached records is exempt from disclosure under Exemption 6 of the FOIA (5 U.S.C. § 552(b)(6)). Specifically, redactions have been made to protect the privacy interests of individuals referenced or named in the records pursuant to Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6). Please note that portions of the attached records have yellow highlight markings. These markings were in the original records and were not made by the FOIA Branch.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person "actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request.

You may contact William T. Hearne, the FOIA Attorney-Advisor who processed your request, at (202) 273-0139 or by email at william.hearne@nrlb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov

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Telephone: (202) 273-0902

Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling
FOIA Officer

Attachment: (290 pages)